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RECENT IMPORTANT DECISIONS.

BANKRUPTCY—ACTS OF BANKRUPTCY—PARTNERSHIP PREFERENCES.—A creditor of the firm of Morgan & Williams, a partnership, petitioned to have the firm adjudged an involuntary bankrupt, on the ground that it had conveyed a portion of its property to named creditors, with intent to prefer said creditors. The debts of the firm exceeded the firm assets, but the individual members of the partnership were amply solvent. *Held*, that as the property of the individual members of the firm, after payment of individual creditors, is liable for firm debts, and is in this case sufficient to pay in full all claims, both individual and firm, no creditor would obtain any greater percentage of his claim than any other, and therefore this conveyance was not such a one as to amount to a preference under Section 60 a, or to an act of bankruptcy under Section 3 a, Bankruptcy Act of 1898, *Washington Cotton Co. v. Morgan & Williams* (1911) 192 Fed. 310.

There is apparently but one case directly in point, the one relied on in the principal case, *Tumlin v. Bryan*, 165 Fed. 166, wherein it is said: "It is true that a partnership may be treated as an entity separate from its individual members, * * * but in a suit to recover a preference, it is not only the insolvency of the intangible entity, but the insolvency of its component parts that lies at the foundation of the right to relief. If the component parts of the firm may be made to pay the firm's debts, the suit lacks reason and substance." See also *Worrell v. Whitney*, 179 Fed. 1014. There is, however, no magic in the law regarding preferences, and as to them, the firm and its individual members preserve their separate identities, 2 REMINGTON, § 2265; *In re Lehigh Lumber Co.*, 101 Fed. 216; *In re Sanderlin*, 109 Fed. 857; *In re Redmond*, Fed. Cas. No. 11632; *McNair v. McIntyre*, 133 Fed. 113; *Hartman v. John Peters & Co.*, 146 Fed. 82; *In re Perlhefter*, 177 Fed. 299; *Catchings v. Chatham Nat'l Bank*, 180 Fed. 103; so that the one and only question upon which such cases must turn is the question controlling in so many partnership cases, of how far a partnership for bankruptcy purposes will be held to be an entity, and as such, separate and distinct from its individual members in determining all questions in regard to it, including its insolvency. See 10 MICH. L. REV., 215.

BANKRUPTCY—CONSTITUTIONAL PROTECTION AFFORDED BY THE FOURTH AND FIFTH AMENDMENTS TO THE CONSTITUTION.—Defendant was indicted for obtaining money under false pretenses and pleaded in abatement *inter alia* that in a bankruptcy proceeding in which he was bankrupt, his books, papers and records were taken possession of by his trustee under order of the bankruptcy court, and that without his knowledge or consent these papers were examined and used by the grand jury in finding the present indictment. *Held*, that there was no unreasonable or unlawful seizure of the books and records, possession of them being obtained by an order of the bankruptcy court to deliver them as property, the title to which had passed from the bankrupt to his trustee, and

if, as an incident to this change of property and possession, they were used as evidence in a criminal prosecution, it is merely one of the misfortunes of bankruptcy where it follows crime. Nor was this compelling defendant to testify or personally produce his private books and papers in evidence against himself. There was here no violation of the constitutional protection guaranteed under the fourth and fifth amendments. *U. S. v. Halstead* (D. C. 1912), 27 A. B. R. 302.

What protection against the use of his books, papers, etc., in the hands of his trustee is afforded a bankrupt in subsequent criminal proceedings against him, has long been a mooted question. The protection given by the Act itself, Section 7 (9), Bankruptcy Act of 1898, extends only to making use of the bankrupt's testimony given before his creditors in subsequent criminal proceedings in Federal Courts. *LOVELAND, BANKRUPTCY*, p. 644; *REMYNTON*, § 1557; *In re Nachman*, 114 Fed. 995. But whether or not this protection also extends to State courts is unsettled. *Commonwealth v. Ensign*, 40 Pa. Sup. Ct. 157. By Section 70a(1) of the Bankruptcy Act of 1898, the trustee is vested with title to the bankrupt's books, papers, etc., and they pass to him upon adjudication in bankruptcy, and not because of any unreasonable search or seizure in contravention of the fourth amendment. *REMYNTON*, § 1548; *In re Fixen & Co.*, 96 Fed. 748; *In re Hess*, 134 Fed. 109. The privilege guaranteed under the fifth amendment may be preserved as to the subsequent use of the bankrupt's books in criminal action against him, by properly claiming it at the time of their delivery to his trustee, and making such delivery only upon such conditional order from the Court, assuring him of this protection. *COLLIER*, Ed. 8, p. 192, Note 143; *In re Hess*, *supra*; *In re Tracy & Co.*, 177 Fed. 532; *In re Harris*, 164 Fed. 292; *In re Hark*, 136 Fed. 986; whether he be a voluntary or an involuntary bankrupt. *COLLIER*, 192; *U. S. v. Goldstein*, 132 Fed. 789; *In re Walsh*, 104 Fed. 518; *In re Tracy & Co.*, *supra*. *Contra: In re Sapiro*, 92 Fed. 340. But this privilege is personal, and will be waived unless claimed at the time, and when so waived no objection can be made to prevent the production of the books, papers, records, etc., title to which had passed to the trustee, for use in subsequent criminal proceedings against the bankrupt. *REMYNTON*, § 1158; *Kerrch v. U. S.*, 171 Fed. 366.

BANKRUPTCY—INTEREST—WHEN PAYABLE AFTER DATE OF FILING PETITION AND UP TO DATE OF PAYMENT.—The final report of the trustees of a firm of voluntary bankrupts, showed a large surplus on hand after the payment in full of all debts, with interest thereon to the date of the filing of the petition; *Quære*, should all of such surplus be returned to the bankrupt, or should it first be applied to the payment of interest which has accrued on claims subsequent to the filing of the petition, and the remainder only be returned to the bankrupt? *Held*, that though the Act makes no provision for repayment to the bankrupt of such a surplus yet it would equitably belong to the bankrupt, and no statute would be necessary to authorize the Court to so direct. As a general rule, such interest only is payable on claims as can be proved at the time of filing the petition, but the bankrupts, invoking equity to obtain